

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 FOR THE WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 UNITED STATES OF AMERICA, et al.,

9 Plaintiffs,

10 v.

11  
12 STATE OF WASHINGTON, et al.,

13 Defendants.  
14

Case No. C70-9213RSM

Subproceeding No. 17-03

ORDER DENYING STILLAGUAMISH  
TRIBE OF INDIANS' MOTION TO HOLD  
TULALIP TRIBES IN CIVIL CONTEMPT  
AND FOR SANCTIONS

15 THIS MATTER comes before the Court on the Stillaguamish Tribe of Indians' Motion  
16 to Hold Tulalip Tribes in Civil Contempt and For Sanctions, and Memorandum In Support  
17 Thereof. Dkt. #47.<sup>1</sup> Stillaguamish asserts that Tulalip has violated two provisions of the Order  
18 Approving Settlement Agreement Between Stillaguamish and Tulalip Tribes Re Puget Sound  
19 Fishing Area Claims in *United States v. Washington* and Stipulation and Agreement of  
20 Stillaguamish and Tulalip Tribes Re Tulalip [U&A] in *U.S. v. Washington, In re Tulalip Tribe's*  
21 *Request for Determination of Usual and Accustomed Fishing Places*, by failing to "recognize"  
22 northern Port Susan as a non-exclusive usual and accustomed fishing area of the Stillaguamish  
23 Tribe, and by failing to "affirmatively support" the Stillaguamish Tribe's request for  
24 determination as to northern Port Susan and lower Skagit Bay. Dkt. #47.  
25  
26  
27  
28

---

<sup>1</sup> Dkt. #21,799 in Case No. C70-9213RSM.

1 The Court has reviewed the motion, along with Tulalip's opposition thereto, Swinomish  
2 Indian Tribal Community's response thereto, and Stillaguamish's reply in support thereof, and  
3 now DENIES the motion for the following reasons.

4 As Tulalip points out, in order to find it in contempt of court, Stillaguamish must establish  
5 by clear and convincing evidence that: (1) Tulalip violated the court order; (2) the noncompliance  
6 was more than technical or de minimis, and (3) Tulalip's conduct was not the product of a good  
7 faith or reasonable interpretation of a violated order. *Go-Video v. Motion Picture Assn. of*  
8 *America*, 10 F.3d 693, 695 (9th Cir. 1993). A court may not hold a party in contempt for conduct  
9 outside the presence of the court unless that court sets a show cause hearing and provides the  
10 alleged contemnor with an opportunity to be heard on the matter. *International Union, UMW*  
11 *v. Bagwell*, 330 U.S. 585, 590 (1947).  
12  
13

14 Here, the Court finds that Stillaguamish has failed to meet the high standard for contempt,  
15 and therefore no show cause hearing is required. Indeed, the Court agrees with Tulalip that much  
16 of the Stillaguamish motion is based on speculation, as Tulalip has not yet set forth its position  
17 as to the Stillaguamish Request for Determination in this matter. Indeed, the deadline for motions  
18 pertaining to threshold issues is not until October 5, 2018. *See* Dkt. #53. Further, the Court finds  
19 that Stillaguamish have not shown by clear and convincing evidence that Tulalip have not  
20 "recognized" the subject portion of Area 8A as a non-exclusive usual and accustomed fishing  
21 area of the Stillaguamish Tribe. This is particularly true when viewed in light of the Agreement,  
22 which affirmatively states that Tulalip does make such recognition. Dkt. #48, Ex. B at ¶ IV.B.  
23 Likewise, Tulalip has produced evidence that it has supported the Stillaguamish in that fishing  
24 area. Dkt. #54 at 7-8.  
25  
26  
27  
28

1           Rather than respond to the arguments made by Tulalip – the target of the Stillaguamish  
2 motion – Stillaguamish focuses only on the Swinomish response. Dkt. #58. Stillaguamish argues  
3 at length that this Court should not be persuaded by any agreement between Swinomish and  
4 Tulalip, or any other of Swinomish's arguments. *Id.* Stillaguamish provides no rebuttal to  
5 Tulalip's arguments or evidence in opposition to its motion.  
6

7           Accordingly, the Court DENIES the Stillaguamish Motion to Hold Tulalip in Contempt  
8 (Dkt. #47 and Dkt. #21,799 in Case No. C70-9213RSM), and this case shall proceed on the  
9 briefing schedule already set by the parties and this Court.

10           DATED this 5 day of September, 2018.

11  
12  
13           

14           RICARDO S. MARTINEZ  
15           CHIEF UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28